

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELNORA CARTHAN, *et al.*, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

No. 5:16-cv-10444-JEL-MKM

HON. JUDITH E. LEVY

MAG. MONA K. MAJZOUB

v.

GOVERNOR RICK SNYDER, in his
individual and official capacities, *et*
al.,

Defendants.

**STATE DEFENDANTS' NOTICE OF SUPPLEMENTAL
AUTHORITY IN SUPPORT OF THEIR MOTION TO DISMISS
UNDER FED. R. CIV. P. 12(b)(1) AND (b)(6)**

State Defendants cite for this Court's consideration the following
recent decision of the Michigan Court of Appeals in *Boler, et al v.*

Governor, et al, ___ N.W.2d ___ (Mich. Ct. App. 2018), issued June 14,
2018 (Docket No. 337383). (Exhibit A.)

In *Boler*, the Michigan Court of Appeals rejected the City's claim
to be an "arm of the State" that may invoke the Michigan Court of
Claims' jurisdiction. The Court noted that the City's operation of
municipal waterworks is "serving only a limited number of people

within its boundaries, not the state as a whole.” (*Id.* at 6.) And it held that “[n]o function or purpose of the state was accomplished” by emergency management but “[t]he City was instead always operating as a means through which the functions of its own entity were accomplished.” (*Id.* at 7.)

The Michigan Court of Appeals’ decision is relevant to this Court’s Eleventh Amendment immunity analysis for several reasons. Under the first and most significant factor under *Ernst v. Rising*, 427 F.3d 351 (6th Cir. 2005), whether the State is liable for judgment, *id.* at 359, the City argued the State would be liable based on the Michigan Court of Claims’ process for satisfying judgments against state agencies. (Dkt. 32-1, pp. 32–33.) (citing Mich. Comp. Laws § 600.6458(2).) But because the City cannot invoke that court’s jurisdiction, its argument fails. *Boler* is similarly pertinent to the second factor—how Michigan law refers to the entity, *Ernst*, 427 F.3d at 359—because it holds that the City is *not* an “arm of the State” under Michigan law. *Boler*, at pp. 6–7. And it is relevant to the fourth factor because it affirms the self-evident: the City engages in *local* functions. *Id.*; *Ernst*, 427 F.3d at 359.

CONCLUSION AND RELIEF REQUESTED

Accordingly, for those and the other reasons previously briefed to this Court, State Defendants respectfully request that this Court deny the City of Flint's request for Eleventh Amendment immunity.

Respectfully submitted,

/s/ Zachary C. Larsen

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Dated: June 20, 2018

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2018, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record. A copy of this document was sent via U.S. mail to the chambers of Honorable Judith E. Levy.

Respectfully submitted,

/s/ Zachary C. Larsen

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